

CONFIDENTIAL 92-CV-204-WDS

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November 26, 1991

Stephen P. Krichma, Esq.  
Environmental Counsel  
MONSANTO COMPANY  
800 North Lindbergh Boulevard  
St. Louis, MO 63167

Re: Cerro vs. Monsanto

Dear Mr. Krichma:

Please excuse the delay in responding to our recent telephone discussions and your most recent letter of October 18, 1991 containing the cost estimates for the Creek Sector B work. I had major surgery just two days before your last letter and am just now sufficiently back on my feet to resume our settlement discussions. As we discussed the last time we spoke, our client has considered your last offer and the subsequent discussions between us directed toward reaching a common ground for resolving the open liability issues between our respective clients. In furtherance of these discussions, you have provided us with the Geraghty & Miller scope of work and most recently the cost estimates for the contemplated remedial investigation of Creek Segment B. This letter is intended to constitute an offer of settlement subject to terms and conditions to be set forth in a final writing to be executed between our respective clients with respect to Cerro's demand made upon Monsanto in connection with the

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response action costs incurred by Cerro at Creek Segment A. Inasmuch as this letter constitutes a settlement offer and discussion, of course it is not evidentiary with respect to any statement of any fact or law.

As I have advised you, there is much to recommend the overall "meat cleaver" approach to settlement which Monsanto favors, recognizing that precision cannot always be achieved. Nonetheless, we have based this offer of settlement on several quite salient factors. First, it appears reasonably clear to us that Creek Segment A not only functioned as an essential conduit for wastewater discharge from Monsanto, but in fact was modified at times based upon specific design input from Monsanto engineers. In addition, the contaminants of primary concern which had a substantial impact on the overall cost of remediation are PCB's, PCB manufacturing precursors, and other organics that could only have originated with Monsanto wastewater effluent. Cerro, however, does recognize that it is the current legal owner of the site and that some of the metals in the Creek sediments, albeit not major cost contributors, could have originated in discharges from Cerro operations. In view of these factors, Cerro is prepared to reduce its earlier demand significantly in settlement of the matter.

Second, with respect to the cost of stormwater diversion, that diversion was necessary in order to undertake the response action; we believe it is a recoverable cost of response incurred consistent with National Contingency Plan and hence a liability of Monsanto. Nonetheless, in the interest of accommodating a settlement of this matter, Cerro is prepared to recognize that it has obtained a permanent benefit from the reconstruction and therefore should not look to Monsanto to bear the same degree of responsibility with respect to such costs as it should with respect to the other removal action costs. Cerro is prepared to debit the calculation of total recoverable response costs by one-half of the cost of the stormwater construction.

Third, total project spending as of May 1991, a copy of which was previously forwarded to you, has been revised to fully reflect the actual final expenses. Among the significant differences is that a contract dispute with Chemical Waste Management, Inc. regarding some of their fees has been settled and a credit has been allowed

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Cerro of approximately \$270,000. In addition, the Town of Sauget has reimbursed Cerro over \$500,000, in consideration of the stormwater diversion. The IEPA oversight cost, only an estimate in May, has not been finalized, however, we have a verbal statement of the amount. The revised final computation of the actual project costs are thus lower than the \$13,671,116 set forth in May. The revised figures are attached.

Fourth, because we believe that the parties can and should reach an amicable solution of this matter before year's end, Cerro is also prepared to waive interest on the sum demanded, which we believe has legally accrued as a Monsanto liability, if in fact settlement and payment are made by December 31, 1991.

In consideration of the foregoing, Cerro is prepared to accept in full and complete settlement of any and all liability of Monsanto arising out of Creek Segment A (exclusive of regional groundwater which has yet to be addressed), two-thirds of the actual total response cost incurred after crediting such total with one-half of the stormwater diversion construction.

In addition to a complete and final settlement with respect to the remediation of Creek Segment A, we have discussed the Creek Segment B project and your request that Cerro participate in that effort. The Geraghty & Miller scope of work has a cost estimate of approximately \$250,000. As we have expressed to you informally, our consultants and personnel have certain concerns about the scope, direction, and complexity that may confront any party with respect to Creek Segment B. Nonetheless, we are encouraged by Monsanto's willingness to proceed proactively with respect to that site, and we want to encourage that effort and demonstrate our good faith commitment to working together now and in the future with respect to our clients' mutual problems at Sauget sites. To that end, and as part of the settlement of Creek Segment A, Cerro is prepared to credit Monsanto with one-half of the costs to be incurred by Monsanto in performing a remedial investigation of Creek Segment A up to a maximum of \$300,000 of such expenses (i.e. Cerro's share being limited to \$150,000). We are willing to credit Monsanto with the maximum credit now to be applied against the amounts to be paid by Monsanto for Creek Segment A, subject to a refund later to Cerro based on

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Monsanto's actual expenses. Cerro's contribution to the remedial investigation costs of Creek Segment B is in settlement and satisfaction of any and all liability between our respective clients with respect to remedial investigation costs only at Creek Segment B, and shall have no effect on or be precedent for any liability for ultimate remediation at that or any other site. In addition, we would agree between us to work cooperatively in identifying and obtaining contribution from other potentially responsible parties (PRPs), to share equally in any cost recovery against other PRPs with respect to the RI costs, and to negotiate in good faith concerning remedial costs, as and when required.

In summary, and using the revised cost figures, these matters can be resolved and settled at a cost to Monsanto as follows:

Total Project Costs (11/91)	\$12,836,607
less 1/2 stormwater diversion	
construction (total= \$2,093,256)	<u>(1,046,628)</u>
Subtotal	\$11,789,979
Monsanto share (2/3) of CS-A	\$ 7,859,986
less Cerro contribution to	
CS-B RI	<u>(150,000)</u>
Monsanto Settlement Payment	\$ 7,709,986
if paid by December 31, 1991	

We believe the foregoing is a very fair resolution of the outstanding issues, and as stated above, can and should to be formalized and memorialized in writing, with payment by December 31, 1991 in consideration of Cerro's waiving interest that has accrued since May 1991. We obviously believe that this offer represents a basis of settlement which will avoid the costs and other more serious inconveniences of litigation. Please respond at your earliest convenience.

Very truly yours,

  
MICHAEL L. RODBURG

MLR/leb  
Attachment

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**5.0 RESPONSE ACTION COST SUMMARY** (Revised 11/91)

	<u>5/31/91</u>	<u>REVISED</u>
<b>5.1 REMEDIAL INVESTIGATION/FEASIBILITY STUDY</b>	<b>\$553,507</b>	<b>\$ 558,299</b>
<b>5.2 STORMWATER DIVERSION CONSTRUCTION</b>	<b>\$2,619,857</b>	<b>2,629,456</b> <b>(536,200)</b>
<b>5.3 REMOVAL ACTION COST</b>	<b>\$10,388,617</b>	<b>10,071,933</b>
<b>5.3.1 Engineering</b>	<b>\$188,176</b>	<b>188,464</b>
<b>5.3.2 Construction &amp; Contract Management</b>	<b>\$361,579</b>	<b>361,579</b>
<b>5.3.3 Analytical</b>	<b>\$189,171</b>	<b>189,171</b>
<b>5.3.4 Excavation, Dewatering &amp; Classification</b>	<b>\$1,597,665</b>	<b>1,597,665</b>
<b>5.3.5 Loading</b>	<b>\$204,695</b>	<b>213,647</b>
<b>5.3.6 Transportation</b>	<b>\$1,889,448</b>	<b>1,889,462</b>
<b>5.3.7 Treatment and/or Disposal</b>	<b>\$5,265,347</b>	<b>4,997,231</b>
<b>5.3.8 Vapor Barrier</b>	<b>\$146,625</b>	<b>146,625</b>
<b>5.3.9 Site Restoration and Erosion Control</b>	<b>\$545,910</b>	<b>488,089</b>
<b>5.4 IEPA OVERSIGHT</b>	<b>\$36,000</b>	<b>39,984</b>
<b>5.5 LEGAL COST</b>	<b><u>\$73,135</u></b>	<b><u>73,135</u></b>
<b>TOTAL PROJECT SPENDING</b>	<b>\$13,671,116</b>	<b>\$12,836,607</b>

\* Per Town of Sauget credit (net= \$2,093,256)

\*\* Credit from Chemical Waste Management